

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

K.C. AIR CARGO SERVICES, INC.,

Respondent

v.

THE CITY OF KANSAS CITY, MISSOURI.

Appellant

DOCKET NUMBER WD79786

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: March 7, 2017

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Sandra Midkiff, Judge

Appellate Judges:

Division One
James Edward Welsh, P.J., Anthony Rex Gabbert, and Edward R. Ardini, Jr., JJ.

Attorneys:

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Counsel for Appellant

Attorneys:

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Counsel for Respondent
Co-Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**K.C. AIR CARGO SERVICES, INC., Respondent, v.
THE CITY OF KANSAS CITY, MISSOURI, Appellant**

WD79786

Jackson County

Before Division One Judges: Welsh, P.J., Gabbert, and Ardini, JJ.

The City of Kansas City, Missouri, appeals the circuit court's grant of summary judgment in favor of K.C. Air Cargo Services, Inc. (KCACS) and the denial of the City's cross-motion for summary judgment in a declaratory judgment action concerning the meaning and validity of a clause in a lease agreement between the parties for land at Kansas City International Airport. The City asserts four points on appeal. First, the City contends that the circuit court erred in denying the City's cross-motion for summary judgment because the clause in the lease was not an option to renew but was a right of first refusal. Second, it contends that the circuit court erred in declaring the lease clause to be a valid and enforceable option to renew because the clause is void ab initio as beyond the scope of authority of the City. Third, even if the clause in the lease is a valid option, the City claims that the circuit court erred as a matter of law in declaring that the lease gave KCACS a perpetual option to renew the lease. Fourth, the City asserts that the circuit court erroneously declared and misapplied the law in awarding attorneys' fees to KCACS.

Affirmed in part and reversed and remanded in part.

Division One holds:

(1) As a matter of law, the plain language of the clause and the lease evidence the parties' intent that that clause at issue is an option to lease the premises and not a right of first refusal. Therefore, the circuit court did not err in denying the City's cross-motion for summary judgment.

(2) As a matter of law, given the plain language of the renewal provision, the option to renew clause in the lease would not violate section 82 of the City Charter because the renewal would not result in a lease longer than 50 years.

(3) As a matter of law, the circuit court erred when it declared that the lease gave KCACS a perpetual option to renew the lease. The renewal provision of the lease contains no language customarily used to express an intention for perpetual renewals, and none can be implied. We, therefore, reverse the circuit court's grant of summary judgment to KCACS to the extent that it declared that the renewal provision granted KCACS a right to renew the lease perpetually and remand for the circuit court to enter judgment stating that any right of renewal by KCACS is for one additional term only.

(4) Given the limited facts that were uncontroverted in the summary judgment proceeding, we do not believe that the circuit court had before it sufficient facts for it to declare that special circumstances existed to award attorneys' fees to KCACS. We, therefore, reverse the circuit court's award granting KCACS attorneys' fees and remand for further proceedings to determine whether special circumstances existed, giving the parties the opportunity to present evidence. We also note that KCACS filed a motion for attorneys' fees on appeal. On remand, if the circuit court finds that special circumstances exist, it shall also determine the amount of the attorneys' fees on appeal.

Opinion by James Edward Welsh, Presiding Judge

March 7, 2017

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